Looking Good

An Introduction to Industrial Designs for Small and Medium-sized Enterprises

Intellectual Property
for Business Series
Number 2

WIPO
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1. **Making a Mark:**
   An Introduction to Trademarks and Brands for Small and Medium-sized Enterprises. WIPO publication No. 900.1

2. **Looking Good**:
   An Introduction to Industrial Designs for Small and Medium-sized Enterprises. WIPO publication No. 498.1

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Introduction

This is the second in a series of publications on Intellectual Property for Business. It focuses on industrial designs, a key factor in determining the success of products in the market.

In intellectual property (IP) law, an industrial design constitutes the ornamental or aesthetic appearance of a product. It is what makes a product attractive or appealing to customers, as opposed to the functional aspects of the product.

Visual and aesthetic appeal are key considerations that influence the decision of consumers to prefer one product over another. Industrial designs help companies differentiate their products from those of their competitors and enhance their brand image. In sum, industrial designs are valuable assets so it is very important to protect them effectively.

This publication is produced by the World Intellectual Property Organization (WIPO), the United Nations specialized agency that deals with innovation and IP issues, and is aimed at small and medium-sized enterprises (SMEs) around the world. It explains what industrial designs are and introduces the main issues in industrial design protection, to help businesses make informed decisions about protecting them.

However, the law varies from one country to another, and this guide is not intended as a substitute for professional legal advice.

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Industrial Designs

1. What is an industrial design?

In everyday language, an industrial design generally refers to a product's overall form and function. An armchair is said to have a "good design" when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features, taking into consideration issues such as the product's marketability, manufacturing costs and ease of transport, storage, repair and disposal.

Armchair – DM/096353 FONKEL MEUBELMARKETING

From a legal perspective, an **industrial design refers to the ornamental or aesthetic aspects of a product**. If certain conditions are met, these aspects may be protected as industrial designs, a form of intellectual property (IP). Such protection does not cover the technical or functional aspects of a product. So in the example above, only the appearance of the armchair could be protected as an industrial design; any legal protection for technical or functional aspects would involve other IP rights.

Industrial design is relevant to a wide variety of industrial, fashion and handicraft products; from technical and medical instruments to watches, jewelry, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; and from textile designs to sports equipment. Industrial design is also important in relation to packaging, containers and the "get–up" of products.

Generally, an industrial design may consist of:

- three-dimensional features such as the **shape** of a product;
- two-dimensional features such as **ornamentation, patterns, lines** or **color** of a product;
- a combination of these things.

Example of a three-dimensional design

Bottle of perfume – DM/083330
BULGARI SPA

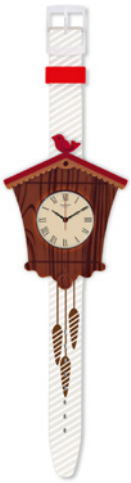
Example of a two-dimensional design

Ornamentation for bags –
DM/084887 CALCAGNI, BARBARA

The functions of creative designs in business

Enterprises invest significant time and resources in enhancing the design appeal of their products. New and original designs are often created to:

- **Customize products to appeal to specific market segments:** small modifications to the design of a product, for example, a wristwatch, may make it more attractive for different age groups, cultures or social groups.
- **Create a new niche market:** in a competitive marketplace, many companies seek to create a niche market by introducing creative designs for their new products to differentiate them from those of their competitors. This could be the case for ordinary items such as locks, shoes, cups and saucers or for expensive items such as jewelry, computers or cars.
- **Strengthen brands:** creative designs may be combined with trademarks to enhance the distinctiveness of a company's brand(s). Many companies have successfully created or redefined their brand image through a strong focus on product design.



Wristwatch – DM/091792 SWATCH AG

Miniature vehicle (toy) – DM/090181
RENAULT S.A.S

2. Why protect industrial designs?

Protecting designs should be part of the business and investment strategy of any designer or manufacturer, for the following reasons:

- A registered industrial design gives the owner an exclusive right to prevent unauthorized copying or imitation by others, thereby strengthening the owner's competitive position and helping them obtain a fair return on investment made in creating and marketing the product.
- Design can add considerable marketing value to a product. It makes a product **attractive** and **appealing** to customers, and may even be its unique selling point.
- Registered industrial designs are business assets that can increase the commercial value of a company and its products. The more successful a design is, the higher is its value to the company.
- The exclusivity provided by a registered design right allows an owner to license others to use the design for a fee, or to assign or sell the design right to others.

Shedding some light on designs

While the functional elements of a lamp will generally not differ significantly from product to product, its appearance is likely to be one of the major determinants of success in the marketplace. This is why industrial registers in many countries have a long list of designs for household products such as lamps.

Floor lamp – DM/081858 WIN SRL

Protecting Industrial Designs

3. What rights are provided by industrial design protection?

In most countries, an industrial design must be registered at the appropriate IP office in order to be protected under industrial design law. Once registered, an **exclusive right to prevent unauthorized copying or imitation of the product** may be obtained.

This means that the owner of such a right may prevent unauthorized third parties from making, selling or importing articles bearing or embodying a design, which is a copy, or substantially a copy, of the registered design, when such acts are undertaken for commercial purposes.

Registration of industrial designs encourages **fair competition** and strengthens honest trade practices, which, in turn, stimulates creativity and promotes the production of a diverse range of aesthetically attractive products.

4. Who may apply for industrial design protection?

In general, the persons who created the design or, if they are working under an employment contract, their employer, can apply for registration. The applicant can be either an individual (e.g., a designer) or a legal entity (e.g., a company). In either case, the application may be made directly or with the assistance of an IP agent. A foreign applicant would be required to be represented by an agent duly authorized by the relevant IP office.

5. Where can an industrial design be registered?

To register an industrial design a national application must be filed at the IP office of the country where protection is sought or a regional application filed at the IP office of an intergovernmental organization such as the European Union or the African Intellectual Property Organization.[1] Alternatively, an international application may be filed with the International Bureau of the World Intellectual Property Organization (WIPO). For more information on how to file an international application and the Hague System for the International Registration of Industrials Designs, see later in this guide "Protecting Industrial Designs Abroad."

6. What can be registered as an industrial design?

The IP office usually examines the **formal** requirements for an application, such as the requirement to include a good quality reproduction of the industrial design or that the required fees are paid. Many IP offices also carry out a **substantive** examination to determine whether the industrial design is registrable.

1 A list of IP offices is available at *www.wipo.int/directory/en/urls.jsp*

In general, an industrial design must meet one or more of the following requirements to qualify for registration:

- It must comply with the **definition** of a design under the applicable law. For example, in some jurisdictions a logo may not be registered as an industrial design because it is not considered to be a product.
- The design must be **new**. A design is new if no identical design has previously been made available to the public. Designs are deemed identical if their features differ only in immaterial details.
- The design must be **original**. A design is original if it has been independently created by the designer and is not a copy or an imitation of existing designs. Designs are not original if they do not significantly differ from known designs or combinations of known design features.
- The design must have **individual character**. This requirement is met when the overall impression that a design produces on an informed user differs from the overall impression produced on such a user by any other design which has already been made available to the public. In assessing the individual character of a design, the degree of freedom of the designer in developing it shall be also taken into consideration.

Example of a logo

DM/086533 RP-TECHNIK GMBH

Traditionally, designs relate to features of manufactured products, such as the shape of a shoe, the design of an earring or the ornamentation on a teapot. In the **digital world**, however, design protection is gradually extending to new products and types of design. These include, for instance, electronic desktop icons generated by computer codes, typefaces, the graphic display on computer monitors and smartphones, and so on.

Example of graphic symbols

DM/097710 KABUSHIKI KAISHA BIGWEST

Example of an icon for an app

DM/098293 I.R.C.A. S.P.A INDUSTRIA RESISTENZE CORAZZATE E AFFINI

Exclusive rights in business

Let us assume that a company has designed a pruner with an innovative design which has been registered at the national IP office, and it has obtained exclusive rights over pruners bearing that design. This means that if it is discovered that a competitor is making, selling or importing pruners bearing the same or substantially the same design, the owner of the registered design will be able to prevent that competitor from using the design and may also possibly obtain compensation for the loss it has suffered from the unauthorized use of that design.

Thus, while competitors cannot be stopped from making competitive products, they may be prevented from copying or making products that look just like registered designs and “free riding” on the creativity of others.

Pruner – DM/077406 FISKARS FINLAND OY AB

7. What designs cannot be protected through design rights?

Designs that cannot be protected include:

- Designs that do not meet the requirements of novelty, originality and/or individual character as discussed above.
- Designs dictated exclusively by the **technical function** of a product. Such technical or functional design features may be still protected but by other IP rights (e.g., patents, utility models or trade secrets), depending on the facts of each case.
- Designs incorporating protected **official symbols or emblems**, such as a national flag.
- Designs considered to be **contrary to public order or morality**.

It is also important to note that some jurisdictions exclude **handicrafts** from design protection, as their industrial design law requires that the product to which an industrial design is applied be "an article of manufacture" or replicated by "industrial means."

Depending on the applicable legislation, there may be further restrictions on what can be registered as a design, so it is advisable to consult an IP agent or the relevant IP office.

8. How must an application for registration of an industrial design be filed?

As indicated above, some IP offices complete the registration of the design after having undertaken a purely formal examination to ensure that administrative formalities have been complied with, while many other IP offices may also conduct a substantive examination by checking the novelty and/or originality of the design application against existing designs on their registers. Therefore, the contents of an application for registration of an industrial design may be different from one jurisdiction to another.

However, there are some common requirements for making national/regional applications. In general, to register an industrial design, the following steps must be taken:

- Fill in the **application form** provided by the national or regional IP office, stating the applicant's name, contact details and legal representative, if any. Reproduction(s) of the industrial design(s) for which protection is being sought may be included if so required by law or if the applicant wishes to do so; the formats/dimensions are usually specified in the application form.

- Depending on the jurisdiction, further requirements may have to be satisfied. For example, in some countries a **written description of the industrial design** may be required or the option to file one may be given. The description concerns the features of the industrial design or its reproduction. Furthermore, in some countries, an **oath from the creator or a declaration of inventorship** may be required to be filed**.**
- Pay the relevant **filing fee**.
- The applicant may choose to have an IP agent to represent or assist him or her in filing the application and completing the registration process. In some countries, the assistance of an IP agent is compulsory. In that case, a **"power of attorney"** will have to be filed to make the appointment.

Once an industrial design is recorded in the industrial designs register of the IP office, the office issues a **registration certificate** to the holder. Most IP offices publish the recording of industrial designs in their official Designs Gazette. In some jurisdictions, it is possible to request **deferment of publication,** in which case the industrial design will be kept secret for a certain period that may vary according to the relevant law. Deferring publication of an industrial design for a certain period may be desirable for strategic business reasons.

9. Can you apply for the registration of many different designs through a single application?

Many jurisdictions provide for a maximum number of industrial designs that may be contained in one application (e.g., up to 100 designs), provided that those designs belong to the same class of product. For example, if there is an intention to protect an industrial design for a lamp and a car, two separate applications would have to be filed since "lamps" and "cars" do not belong to the same class of products.

International classification

Industrial designs are generally classified or grouped into "classes" for ease of retrieval. When applying for a registered design right, the class of products for which the design is intended to be used may have to be indicated. Most IP offices use the International Classification for Industrial Designs (Locarno Classification). The Locarno Classification and the *Locarno Agreement Establishing an International Classification for Industrial Designs* are both available on the WIPO website at: *www.wipo.int/classifications/locarno*

In some jurisdictions, however, a separate application for each design may have to be filed, unless the other designs contained in the application comply with a requirement of "unity of design" under the applicable law. In general, the concept of **unity of design** means that all the designs conform to the same single creative concept. In particular, and although limiting an application to a single design, many jurisdictions allow that "variants" of that design be contained in the same application while others allow for an exception to the "single design" rule when all the designs relate to a "set of articles."

- **Variants** include, for example, two wheeled balancing scooters which differ in color. Generally speaking, "variants" must apply to the same article and must not differ substantially.
- A "**set**," on the other hand, is defined as a number of articles of the same general character which are normally sold together or intended to be used together and which share some common design features. Examples include cutlery (a set of forks, spoons and knives) and household appliances (a hairdryer and its nozzles and brushes).

There is thus wide variation in what is possible to include in a single application. The exact details of the requirements and possibilities for seeking protection in a cost-effective manner in a particular jurisdiction should be established either with the assistance of an IP agent or with the relevant IP office.

Example of a "set"

Set of cutlery – DM/080996 SAVIO FIRMINO DI SAVIO GUIDO E C. S.N.C

Example of a "variant"

Two wheeled balancing scooters – DM/089858 NINEBOT (BEIJING) TECH. CO., LTD

10. How much does it cost to protect an industrial design?

The actual costs of industrial design protection vary significantly from country to country, so it is important to consider the different costs that may be involved in the process:

1. There will be an **application/registration fee** to be paid to the IP office. The amount of the fee may depend on the number of designs to be registered or the number of reproductions submitted for each design. Details of fees can be obtained from the IP agent or from the relevant IP office.

2. There will also be **costs associated with the services of an IP agent**, if an applicant chooses to use an agent or if their use is required by the relevant IP office.

3. Most IP offices require the payment of a **renewal fee** to maintain the exclusive right over an industrial design. The renewal fee is usually paid on a five-year basis.

4. There may also be costs associated with **translation** of the relevant documentation, if the industrial design is to be protected abroad.

11. Should the design be kept confidential before registration?

Keeping the design confidential is absolutely crucial, since the design must be new to qualify for protection. If the design is shown to others, it is advisable to do so within the framework of a confidentiality agreement which makes it clear that the design is confidential.

A design that has already been disclosed to the public, for example by having been advertised in a company catalogue or brochure, may no longer be considered new. It may become part of the public domain and no longer be protected, unless the applicable law provides for a "grace period" or unless the priority of an earlier application can be claimed.

12. What is a grace period?

Certain national legislations allow for a grace period for processing the registration of an industrial design. This period is usually six months to a year, counted from the date of disclosure of the industrial design to the public. In other words, if a product is marketed with a design that has not yet been the subject of a design application, it will be considered to have lost its novelty and will not be eligible for protection through design right. However, in countries where a grace period is provided, an application for a design right may still be submitted within that period and it will still be considered novel, even though it has already been disclosed to the public.

This is the case when the products to which the industrial design is applied are sold or displayed at a trade show, exhibition or fair, or pictures of them are published in a catalogue, brochure or advertisement before an application is filed.

However, as not all jurisdictions provide for a grace period and given that time limits will in any case apply to any such option, it is often advisable to keep the design confidential until an application for design protection is submitted. Bear in mind that even if design rights are lost, other options such as protection under copyright[2] or unfair competition laws may still be available

13. Who owns the rights over an industrial design?

The creator of a design, i.e., the designer, is usually the first owner of the design, unless there are special circumstances. For example, in most jurisdictions, if an **employee** has developed a design under the terms of his or her employment contract – that is, during working hours within the enterprise and as part of his or her regular duties – the design and the related rights will belong to the employer, or the designer may be required to transfer them to the employer through a formal written assignment.

If the design was developed by an **external designer under contract**, the rights will generally belong to the company that commissioned the design. In such cases, it is considered that the design was produced for the use of the person who commissioned the design, who is therefore the owner. Misunderstandings at a later date can be avoided by clarifying the issue of ownership of rights in the original contract with the designer. Bear in mind that the designer of the product may have automatic copyright protection over the design, so this issue should also be covered in the contract.

2 On the protection of industrial design under copyright and unfair competition laws, see later in this guide "Other Legal Instruments for Protecting Industrial Designs."

14. How long does industrial design protection last?

Industrial design rights are granted for a limited period. The duration of the protection of industrial designs varies from country to country, but it amounts to at least 10 years. In many countries, the total duration of protection is divided into successive renewable periods.

15. What should be done if the design combines functional features with aesthetic features?

It is often the case that a new product combines functional improvements with innovative aesthetic features. Different aspects of the product may be protected under different IP rights. It is important to keep in mind the basic difference between industrial designs and patents/utility models:

- Patents and utility models are for **inventions** that bring about **functional improvements** to a product whereas industrial design protection applies solely to its appearance or aesthetic appeal.
- To obtain exclusivity over the **functional features** of a product, it is advisable to apply for **patent** or **utility model** protection or, where the function is not obvious from the product, to keep it as a **trade secret**.

Business strategy: combined protection under different IP rights

Take the example of a new mobile device. It may feature new, improved electronic components which could be protected by patents while its design may be protected as an industrial design.

Can applications be filed for industrial design registration and patents in relation to the same product? Yes.

Example of "combined protection"

Rotation lasers – DM/082519 HILTI AKTIENGESELLSCHAFT

The Hilti rotation lasers used in the construction industry are protected not only by design rights but also by trademark and patent rights.

16. Licensing industrial designs

Industrial designs are licensed when the owner of the design (the licensor) grants permission to another person (the licensee) to use the design for mutually agreed purposes. In such cases, a **licensing contract** is signed between the two parties specifying the terms and scope of the agreement.

Authorizing others to use industrial designs through a licensing contract will enable the licensor to receive an **additional source of revenue** and it is a common means of exploiting the exclusivity over registered designs conferred by the design right. It also enables the licensor to enter markets that it might not otherwise have been able to enter.

Licensing contracts often include **limitations** as to the countries where the licensee may use the design, the time for which the license is granted and the type of products for which it can be used. In order to license the use of a design in foreign countries, the licensor should have obtained, or at least applied for, industrial design protection in those countries. If not, the design is not protected in those countries and the issue of granting another the right to use such a design does not arise. Protecting industrial designs abroad is discussed in the next section of this booklet.

Agreements to license industrial designs are often included in broader licensing agreements, which cover all aspects of a product, not just the aesthetic elements.

17. Protection of an "unregistered design"

In some jurisdictions, it is possible to obtain limited industrial design protection for **unregistered designs**, but only for a short period. This is the case, for example, in the European Union, where unregistered design protection is available and lasts three years from the date on which the design was first made available to the public within the territory of the European Union.

Design protection and business strategy

Taking decisions on how, when and where to protect a company's industrial designs may have an important impact on other areas of design management. It is therefore crucial to integrate issues of design protection into the broader business strategy of the enterprise. For example, the type of protection, the costs, the effectiveness of protection and issues of ownership of designs may all be important considerations when deciding:

- whether to undertake design development in-house or to commission an outside agency;
- the timing of the first-time use of a new design in advertising, marketing or public display in an exhibition;
- which export markets to target;
- if, when and how to license or assign a design to be commercially exploited by other companies in return for economic remuneration.

Protecting Industrial Designs Abroad

18. Why protect industrial designs abroad?

If a company intends to export or sell its products, or to license the right to manufacture such products to other firms in foreign countries, then the design should be protected in those countries.

19. How is an industrial design protected abroad?

Industrial design protection is territorial. This means that industrial design protection is generally limited to the country or region (i.e., group of countries) where the design is registered.

When applying for design protection abroad, there is also what is called the **right of priority**. Once an application has been made for registration of an industrial design right for the first time, the applicant has six months from that date to make a further application in another country and such applications will be considered as if filed on the date of the first application. During this priority period, the applicant has priority over anyone else that applied after the date of the first application for the same or similar design. Once this period has lapsed, the design may no longer be considered "new" and so it may not be eligible for protection at all in other territories.

There are three ways of protecting industrial designs abroad.

1. **The national route**: Separate applications may be made to the national IP office of each country of interest. The process can be rather cumbersome and expensive as translation into the relevant national languages is generally required as well as payment of administrative fees, which may vary substantially from country to country.

2. **The regional route**: If the applicant is interested in a group of countries that are members of intergovernmental entities, a "single" application can be filed at the regional IP office of those regional entities, such as:

- the African Regional Industrial Property Office (ARIPO) for industrial design protection in a number of African countries;
- the Benelux Office for Intellectual Property (BOIP) for industrial design protection in the territory of Belgium, the Netherlands and Luxembourg;
- the European Union Intellectual Property Office (EUIPO) for Registered Community Design in the territory of the Member States of the European Union;
- The African Intellectual Property Organization (OAPI) for protection in the territory of its Member States.

A list of national and regional IP offices may be consulted at *www.wipo.int/directory/en/urls.jsp*

3. **The international route**: A wider geographical area may be covered by filing one international application with WIPO. *The Hague System for the International Registration of Industrial Designs* offers a simple and cost-effective mechanism to apply for industrial design protection in various countries or intergovernmental organizations like EU or OAPI. By filing a "single" international application, a bundle of rights contained in one international registration valid in many countries or territories may be obtained. Thus, important savings can be made at the time of filing. You can also save time, effort and money on maintaining your registration throughout the life of the design, as the Hague System offers the possibility of "central management," i.e., operations occurring during the life of the design (renewal, changes, etc.) can also be handled through a single request transmitted directly to and processed by WIPO.

20. Who can file an international application under the Hague System?

The applicant can be either a "natural person" or a "legal entity" which has a connection to a Contracting Party to the Hague Agreement Concerning the International Registration of Industrial Designs.[3]

More information on the Hague System can be found at: *www.wipo.int/hague*

3 A list of Contracting Parties to the Hague Agreement Concerning the International Registration of Industrial Designs is available at: *www.wipo.int/hague*

Enforcing Industrial Designs

21. How can a design be enforced in case of infringement?

A registered industrial design is infringed if a third party makes, offers for sale, sells or imports articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, without authorization from the right owner.

The main responsibility for identifying and taking action against infringements of an industrial design lies with the right owner. In other words, **the owner is responsible for monitoring the use of his or her design in the physical and online marketplaces, identifying any infringing uses and deciding whether, how and when to take action against them**.

Enforcing an industrial design, like any IP right, may be a complex issue. Whenever **infringement** is suspected, it is advisable to seek professional legal advice. A first action could be to draft a "cease and desist letter" to inform the alleged infringer of a possible conflict between the two designs. However, the right owner needs to be sure that their design rights are valid and infringement can be proved as in many jurisdictions an alleged infringer may bring an action against groundless threats of enforcement proceedings.

Where an infringing use has been identified online, for instance in an online marketplace, the design right owner could follow that website's designated procedure for reporting infringing offers; often, online platforms and other websites will have a "notify and takedown" procedure whereby right owners can notify them of infringing material and have it removed. If there is no established takedown process, the right owner may contact the service provider (i.e., the operator of the online marketplace) directly.

If attempts to warn the alleged infringer through a cease and desist letter have been unsuccessful and the infringement persists, it may be necessary to take legal action. There are a number of measures available. For instance, if the location of the infringing activity is known, it may be possible to take a "surprise action" by obtaining a search and seize order (usually from a competent court or the police) to conduct a raid, without prior notice to the alleged infringer.

In order to prevent the **importation of allegedly infringing goods**, measures at international borders are available to design right owners in many countries through the national customs authorities.

To protect the value of a registered design more generally, it is important to also regularly monitor the registration of designs in order to ensure that a third party is not attempting to register an identical or similar design. Service providers, including lawyers and other IP professionals, can assist with such monitoring. Search tools for design registrations are also available. One such tool is WIPO's Global Design Database; another is Designview. If the right owner discovers that a third party has registered an identical design or one that does not produce a different impression overall, or is attempting to do so, they can refer to their earlier right and either oppose the registration of the later design or request that the later design registration be declared invalid, as the case may be.

Other Legal Instruments for Protecting Industrial Designs

While this publication focuses on industrial design rights, it is important to know that there may be alternative and/or complementary ways of protecting industrial designs under copyright, trademark or unfair competition laws:

- **Copyright protection** generally provides for exclusive rights in relation to literary and artistic works. In some jurisdictions, certain designs may be recognized as being works of art or applied art which may be protected under copyright law. This may represent an attractive option for SMEs, because copyright generally lasts longer than industrial design protection and does not require registration. However, copyright may also be less advantageous than design protection in certain other respects, as explained below.
- If an industrial design functions as a trademark in the marketplace, it may also be registered as a **mark**. In particular, when the shape of the product or its packaging is considered "distinctive," an industrial design may be registered as a three-dimensional mark. The advantage of this is that a mark can be protected indefinitely, provided it is used and maintenance fees are paid periodically.
- Laws on **unfair competition** may also protect a company's industrial design from imitation by competitors.

22. What are the differences between copyright protection and registered industrial design protection?

In some countries, the applicable law recognizes the possibility of copyright protection for some designs, for example those incorporated in textiles and fabrics.

Fabric patterns – DM/094167 IPEKER TEKSTIL

While in many countries it is possible to obtain **cumulative protection** (i.e., copyright protection and industrial design protection) concurrently for the same design, in a few countries the two forms of protection are mutually exclusive.

Before taking any decision on how best to protect a design, it is important to understand the differences between these two forms of protection. Some of the main differences are outlined below.

Registration

- Under industrial design law, the industrial design needs to be **registered** by the applicant before publication, disclosure or public use at least in the country where protection is claimed. The **registration certificate** which is issued to demonstrate that the design is protected under industrial design law may prove useful in cases of infringement, as it represents a solid basis that can be relied on to claim and enforce the exclusive rights.
- Copyright for works considered "original" subsists without the need to observe formalities. While **registration is not necessary for copyright protection**, voluntary copyright registration systems or depositaries exist in some countries. These systems allow you to register a work, make a deposit, or both, and obtain a certificate.

Duration

- Industrial design protection generally lasts between **10 and 25 years**, depending on the country where protection is sought. It must also be borne in mind that the process of registering an industrial design may take some time and may not always be adequate for products that are linked to passing trends (e.g., fashion products).
- Copyright endures in most countries for the **life of the creator of the work plus 50 or 70 years after his or her death**.

Scope of protection

- The right conferred by registration of an industrial design is an **absolute right** in the sense that there is infringement whether or not there has been deliberate copying.
- Under copyright law, there is infringement when a work **deliberately or negligently** reproduces part or the whole of a previously created work protected by copyright. This makes it generally more cumbersome and expensive to enforce in case of infringement.

Types of products

- In most countries that allow some level of protection for designs under copyright law, **not all designs can be protected**, primarily those that may be considered as original works of art. While the distinction may not always be clear, some designs, such as the shape of manufactured products, are unlikely to be protectable under copyright law, while others, such as textile designs, are often covered by both forms of protection.

Costs

- Registering a design entails the payment of fees and may require the services of an IP agent to assist in filing the application, incurring additional costs.[4]
- Since no formal registration of protected copyright work is required under most national copyright laws, there are generally no direct costs relating to copyright protection. However, there may be costs related to (a) the registration of a work in the voluntary registration system and/or the deposit of the work at the voluntary copyright depositary, in countries where this option exists, and (b) demonstrating proof of ownership in case of disputes.

In summary, while both forms of protection are valid, the protection granted by registered industrial designs is stronger and more effective. It covers unintentional as well as intentional or negligent infringement and provides a registration certificate, which constitutes proof in case of an infringement claim. However, it requires more financial and administrative effort, the registration process takes time and protection does not last as long as copyright.

In any event, and particularly if the design is not registered, it is advisable to **keep good records of every step in the development of the design**. Signing and dating each sketch, and properly archiving them, may also be helpful.

4 To estimate application or renewal fees under the Hague System, see the fee calculator at: *www.wipo.int/hague/en/fees/calculator.jsp*

23. Can laws on unfair competition protect designs?

In many countries, industrial designs are often protected under unfair competition laws. Thus, a design may be protected against acts of unfair competition including, in particular, slavish copying and acts that may lead to confusion, acts of imitation or use of a third party's reputation. However, protection under unfair competition is generally significantly weaker than under industrial design law, and infringement is more difficult to prove.

For further information on:

Small and medium-sized enterprises (SMEs) and WIPO, visit: *www.wipo.int/sme*

Hague – The International Design System, visit: *www.wipo.int/hague*

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